EXHIBIT A

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SPECTRUM FIVE LLC

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

NEMATICITO INC., a Delaware corporation; DEDI HAZIZA, an individual, Plaintiffs, v. SPECTRUM FIVE LLC, a Delaware limited liability company; and DOES 1 through 10, inclusive, Defendant.	Case No.: 1-14-cv-270709 **DEFENDANT SPECTRUM FIVE LLC'S FIRST AMENDED ANSWER AND CROSS-COMPLAINT** Complaint Filed: September 17, 2014 Trial Date: None Set

Defendant Spectrum Five LLC ("Defendant") responds to the complaint ("Complaint") filed by Plaintiffs NematicITO Inc. and Dedi Haziza ("Plaintiffs") as follows:

GENERAL DENIAL

Defendant responds to the Complaint pursuant to California Code of Civil Procedure § 431 *et seq*. and generally denies each and every allegation in said Complaint and further denies that Plaintiffs have been damaged in any and all amounts, or at all, and further alleges as affirmative defenses and counterclaims, set forth below.

AFFIRMATIVE DEFENSES

1. Defendant asserts the following affirmative defenses. In doing so, Defendant does not concede it bears any burden of proof as to any of them. Discovery is ongoing, and therefore Defendant has not yet fully collected and reviewed all information and materials that may be relevant to the matters and issues raised herein. Accordingly, Defendant reserves the right to

amend, modify, or expand these defenses and to take further positions as discovery proceeds in this matter.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

2. The Complaint, and each purported cause of action alleged therein, fails to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE
(Reasonableness, Good Faith, And Due Care)

3. Defendant acted reasonably, in good faith, and with due care at all material times, based on all relevant facts and circumstances known by Defendant at the time it acted.

THIRD AFFIRMATIVE DEFENSE
(Impossibility, Impracticability, Frustration of Purpose)

4. Defendant's performance was excused or prevented by impossibility, impracticability, or frustration of purpose.

FOURTH AFFIRMATIVE DEFENSE
(Statute of Frauds)

5. The Complaint is barred, in whole or in part, by the applicable statutes

FIFTH AFFIRMATIVE DEFENSE
(Conditions Precedent)

6. The Complaint is barred, in whole or in part, because the nonoccurrence of condition(s) precedent excused any alleged obligations of Defendant.

SIXTH AFFIRMATIVE DEFENSE
(Conditions Subsequent)

7. The Complaint is barred, in whole or in part, because the nonoccurrence of condition(s) subsequent excused any alleged obligations of Defendant.

SEVENTH AFFIRMATIVE DEFENSE
(Plaintiff's Breach of Agreement)

8. The Complaint is barred, in whole or in part, because any failure of Defendant to perform was excused by Plaintiffs' breach of any alleged agreement.

EIGHTH AFFIRMATIVE DEFENSE
(No Consideration)

9. The Complaint is barred, in whole or in part, because there was a lack of and/or failure of consideration, excusing any alleged obligations of Defendant. Moreover, it appears that at the time of the Agreement (or Patent License), Plaintiffs lacked proper title or authority to enter into a patent license in the first place. For instance, Plaintiffs have come forward with no allegation that Plaintiff NematicITO ever owned or was authorized to license patents under the Agreement. Moreover, it appears that Plaintiff Dedi David Haziza may also have lacked ownership and authority. Moreover, to the extent Plaintiffs claim

NINTH AFFIRMATIVE DEFENSE
(Modification)

10. The Complaint is barred, in whole or in part, because Plaintiffs, through their acts, omissions, knowledge, statements and conduct, modified the alleged agreement(s) they had entered into with Defendant so as to relinquish all or some of their rights under the alleged agreement(s).

TENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

11. By virtue of conduct by Plaintiffs, they have or have had unclean hands and are therefore barred from recovering any relief in this action.

ELEVENTH AFFIRMATIVE DEFENSE
(Consent)

12. The Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because Plaintiffs ratified, agreed, acquiesced or consented to the conduct about which they now complain.

TWELFTH AFFIRMATIVE DEFENSE
(Excuse)

13. Any performance required of Defendant was excused by virtue of the prior conduct of Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

14. Plaintiffs are estopped by their own actions and conduct from asserting any causes of action against Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

(Laches)

15. Any recovery by Plaintiffs is barred by the doctrine of laches.

FIFTEENTH AFFIRMATIVE DEFENSE

(Waiver)

Defendant is informed and believes, and based thereon alleges, that Plaintiffs have engaged in conduct and activity sufficient to constitute a waiver of any right to assert the allegations in the Complaint, and each purported cause of action therein.

SIXTEENTH AFFIRMATIVE DEFENSE

(Privilege)

16. Any and all acts by Defendant which are alleged to be unlawful or improper were privileged and justified.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Misrepresentations By Plaintiffs)

17. The conduct of Defendant or its agents which is alleged by Plaintiffs to be unlawful, improper, or actionable was taken as a result of misrepresentations or concealment by Plaintiffs, or their agents or employees.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Cal. Civ. Code § 1431.1 *et seq*.)

18. Plaintiffs' right, if any, to recover non-economic damages based on the Complaint, and each purported cause of action thereof, is limited by the provisions of Cal. Civ. Code § 1431.1, *et seq*.

NINETEENTH AFFIRMATIVE DEFENSE

(Punitive Damages)

19. The Complaint, and each purported cause of action alleged therein, fails to allege facts sufficient to allow recovery of punitive or exemplary damages from Defendant.

TWENTIETH AFFIRMATIVE DEFENSE
(California Civil Code §3294)

20. The Complaint, and each purported cause of action alleged therein, fails to state facts sufficient to justify an award of punitive damages against Defendant pursuant to California Civil Code § 3294.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages)

21. An award of punitive damages in this action would violate Defendant's due process and equal protection rights under the United States Constitution and the California Constitution.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(Lack of Causation)

22. Any damages to which Plaintiffs may be found entitled to in this action, if any, were not directly or proximately caused, in whole or in part, by Defendant, and such damages, if any, must be decreased by the extent to which the acts or omissions of Plaintiffs or any other third parties were a cause of said damages, if any.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Setoff, Offset, Recoupment)

23. Some or all of the purported causes of action in the Complaint are subject to setoff, offset, and/or recoupment.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Lack of Certainty)

24. The agreement(s) alleged in the Complaint is unenforceable for lack of certainty.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Plaintiffs Not Entitled to Attorneys' Fees)

25. Plaintiffs' purported causes of action fail to state facts sufficient to entitle Plaintiffs to an award of attorneys' fees in any amount.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Unjust Enrichment)

26. The Complaint, and each purported cause of action contained therein, is barred, in whole or in part, because Plaintiffs would be unjustly enriched if they were to prevail on any of the causes of action.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

27. Plaintiffs have failed to mitigate their damages, and to the extent of such failure to mitigate, any damages awarded to Plaintiffs should be reduced accordingly.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

28. Each and every cause of action in the Complaint is barred, in part or in whole, by applicable statutes of limitations.

TWENTY-NINTH AFFIRMATIVE DEFENSE
(Failure to Plead Fraud With Particularity)

29. Plaintiffs have failed to plead their cause of action for fraud with the requisite particularity.

THIRTIETH AFFIRMATIVE DEFENSE
(Parol Evidence Rule)

30. The allegations in the Complaint, which rely on extrinsic evidence to vary the terms of the agreement(s) alleged, are barred by the Parol Evidence Rule.

THIRTY-FIRST AFFIRMATIVE DEFENSE
(Lack of Standing)

31. One or more Plaintiffs lacks standing.

THIRTY-SECOND AFFIRMATIVE DEFENSE
(Non-Infringement)

32. Defendant does not infringe and will not infringe any claim of U.S. Patent Nos. 7,656,359 and 7,884,779 (collectively, "patents-in-suit" as licensed and described in the Agreement alleged in the Complaint), either literally or under the doctrine of equivalents. Defendant's activities and anticipated activities are different in function, structure, and operation than the claims of the patents-in-suit, and the differences are not insubstantial.

THIRTY-THIRD AFFIRMATIVE DEFENSE
(Prosecution History Estoppel)

33. By reason of the proceedings in the U.S. Patent and Trademark Office ("USPTO") during the prosecution of the applications resulting in the issuance of the patents-in-suit, Plaintiffs are estopped from extending the coverage of the asserted claims, including under the doctrine of

equivalents, to cover any product manufactured, used, sold, or offered for sale by Defendant. Plaintiffs cannot prove infringement via the doctrine of equivalents because it would allow the applicant to recapture patent scope that he voluntarily surrendered in order to acquire the patents-in-suit, and would vitiate key limitations of the claims.

THIRTY-FOURTH AFFIRMATIVE DEFENSE
(Invalidity)

34. The claims of U.S. Patent Nos. 7,656,359 and 7,884,779 (collectively, "patents-in-suit" as licensed and described in the Agreement in the Complaint) are invalid pursuant to one or more of the provisions of Title 35 of the United States Code, including, but not limited to 35 U.S.C. §102, §103, and §112. The claims of the patents-in-suit are anticipated by §102 or rendered obvious by the disclosure of the claimed invention to the public before the priority date of the patents-in-suit. The claims of the patents-in-suit are invalid because they were described in patents and printed publications, in public use, the subject of public demonstrations, offered for sale and/or on sale in the United States more than one year before the effective filing dates of the patents-in-suit (§102(b)). The claims of the patents-in-suit are invalid because the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. (§103). The claims of the patents-in-suit are also invalid, for indefiniteness and lack of written description under 35 U.S.C. §112 and/or the doctrine of obviousness-type double patenting.

35. One or more of the following patents and references anticipate claims of U.S. Patent No. 7,656,359 patent under §102, and one or more of the following references, in combination with the skill of one of ordinary skill in the art at the time of the alleged invention, render claims of that patent-in-suit obvious under §103:

- U.S. Patent No. 2,994,873 (Goubou)
- U.S. Patent No. 6831613 (Gothard et al.)
- U.S. Patent No. 3109174 (Plummer)
- U.S. Patent No. 4,090,203 (Duncan)
- U.S. Patent No. 7030824 (Taft)

36. One or more of the following patents and references anticipate claims of U.S. Patent No. 7,884,779 under §102, and one or more of the following references, in combination with the skill of one of ordinary skill in the art at the time of the alleged invention, render claims of that patent-in-suit obvious under §103:

- U.S. Patent No. 7,042,397 (Charrier)

37. The examples identified above are not exhaustive and Defendant's investigation is ongoing. Defendant will serve contentions regarding invalidity of the patents-in-suit throughout the case and after it receives from Plaintiffs its contentions regarding how Defendant's activities, products, and services (actual and anticipated) infringe or are covered by the claims of the patents-in-suit.

THIRTY-FIFTH AFFIRMATIVE DEFENSE
(Laches, Estoppel, and Acquiescence)

38. Plaintiffs' claims for infringement of the Patents-in-Suit are barred by the equitable doctrines of laches, estoppel, and acquiescence.

THIRTY-SIXTH AFFIRMATIVE DEFENSE
(No Right to Injunctive Relief)

39. Plaintiffs are not entitled to any injunctive relief, as a matter of law, and cannot satisfy the requirements applicable to any request for injunctive relief in any form.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE
(Unenforceability Due to Patent Expiration)

40. Plaintiffs are not entitled to recovery to the extent it allowed its patents to expire, including for failure to pay scheduled U.S. Patent and Trademark Office maintenance fees.

RESERVATION OF ADDITIONAL DEFENSES

41. Defendant hereby gives notice that it intends to rely on such other and further affirmative defenses as may become available during discovery in this action and reserves the right to amend its Answer to assert any such defenses.

COUNTERCLAIMS

In addition to its affirmative defenses, Defendant Spectrum Five LLC ("Defendant") asserts the following counterclaims against Plaintiffs NematicITO Inc. and Dedi David Haziza ("Plaintiffs"):

42. Defendant incorporates all allegations of its Answer, including the factual allegations of its affirmative defenses, as if fully set forth herein.

PARTIES

43. Defendant Spectrum Five LLC is a Delaware limited liability company, with its principal place of business in Washington, D.C.

44. Plaintiff NematicITO Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Santa Clara, California.

45. Plaintiff Dedi David Haziza is an individual residing in Santa Clara County, California. Plaintiff Haziza is the purported inventor, assignee, and owner of the patents-in-suit.

VENUE AND JURISDICTION

46. This is an action arising under federal law and the laws of California. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§1331, 1332, 1338, and 1454. This Answer and Counterclaim states defenses and claims arising under an Act of Congress relating to patents, 35 U.S.C. §271 *et seq*.

47. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202 by virtue of Plaintiffs' assertion of claims and filing of a complaint against it, thereby establishing case and controversy.

48. This Court has personal jurisdiction over Plaintiffs. Upon information and belief, Plaintiffs NematicITO and Haziza reside in this judicial district. They also conduct substantial business in this judicial district, including doing and soliciting business, engaging in other persistent courses of conduct, and deriving revenue from individuals and entities in California.

49. Venue is also proper in this District in light of Plaintiffs' filing of its Complaint against Defendant in judicial district, specifically the Superior Court of California, Santa Clara County. (Ex. D).

50. An actual controversy over patent non-infringement, invalidity, and unenforceability. Plaintiffs' Superior Court Complaint alleges that they licensed the patents-in-suit to Defendant and that Defendant breached such patent license by, *inter alias*, failure to pay royalties. By this Answer and Counterclaims, Defendant asserts that it owed no such royalties because, *inter alias*, its activities do not infringe any such patents, that such patents do not cover the Technical Requirements of the Patent License, that the patents-in-suit are invalid, and additionally, that the patents-in-suit are unenforceable.

51. This Court also has supplemental jurisdiction over Plaintiff's breach of contract, intentional misrepresentation, and negligent misrepresentation claims pursuant to 28 U.S.C. §1367 because each arises out of the same acts and occurrences that give rise to the declaratory judgment claims.

FACTUAL BACKGROUND

U.S. Patent No. 7,656,359

52. On or about February 2, 2010, U.S. Patent No. 7,656,359 was issued by the U.S. Patent and Trademark Office (hereafter "'359 patent") (entitled Apparatus and Method for RF Antenna Feed) (Ex. B).

53. On its face, the '359 patent identifies the inventor as Plaintiff Dedi Haziza.

54. On its face, the '359 patent patent identifies a company named Wavebender, Inc. as assignee and owner of the patent.

U.S. Patent No. 7,884,779

55. On or about February 8, 2011, U.S. Patent No. 7,884,779 was issued by the U.S. Patent and Trademark Office (hereafter "779 patent") (entitled Multiple Input Switch Design) (Ex. C).

56. On its face, the '779 patent identifies the inventor as Plaintiff Dedi Haziza.

57. On its face, the '779 patent patent identifies a company named Wavebender, Inc. as assignee and owner of the patent.

Patent License

58. On or about November 27, 2013, Plaintiff NematicITO and Defendant Spectrum Five LLC entered into a Technology Licensing and Development Agreement ("Patent License," Ex. A).

59. The Patent License purportedly granted an exclusive right over certain licensed technology, including the '359 and '779 patents:

Attachment I: Description of the Waveguide Technology Covered by the Exclusive Licensing Agreement.

1. Description and List of Patents: for waveguide and soft switch technology

1. **US Patent 7656359 - Multi-Beam/Scanning RF Feeds and Arrays – Waveguide Antenna technology core.**
2. **US Patent 7884779 - Low Loss Multiple Input soft-switch technology.**
3. **US Patent Pending - Application Number 61905280 covering the following:**
   a. **Dual Polarization Array and Feeds.**
   b. **Phase/Frequency shifting waveguide and Array.**
   c. **Polarizing Radiating elements**
   d. **Planar wave-spider feeds, wide range scanning.**

(Ex. A at 9).

60. NematicITO also purported to transfer exclusive licensing rights in a then-pending U.S. Patent Application No. 61/905,280 to Defendant. (*Id.*).

61. The Patent License represented that such licensed technology covered and enabled certain technology applications Spectrum Five's required technical requirements for two-way aviation and automotive antenna systems (hereinafter "Technical Requirements"), including:

1. **Licensed Antenna Systems:** Shall mean:

   a. Licensor's aeronautical mobile satellite antenna system, or any successor model capable of receiving/transmitting satellite signals in the Designated Frequency Bands and Designated Markets based on the Licensor's patented (including patentable and patent pending) steerable antenna technology as described in the patents enumerated in Attachment 1;

   b. Licensor's terrestrial vehicle (automotive) mounted satellite antenna system (both after-market and OEM applications), or any successor model capable of receiving/transmitting satellite signals in the Designated Frequency Bands and Designated Markets based on the Licensor's patented (including patentable and patent pending) steerable antenna technology as described in the patents enumerated in Attachment 1;

2. **Baseline Configuration: Aviation and Automotive Markets**

a. Aviation Product: 18" (nominal) diameter KuFSS and KuBSS band antenna with dual-polarization capability with Minimum Gain of 32.5 dBi and G/T of (TBR) dB/°K at boresight, with scanning/tracking performance that duplicates or exceeds the receive antenna performance of the ThinAir KuFSS diameter antenna described in Attachment II. The aviation product tentatively utilizes an 8:1 elevation soft-switch (using the licensed technology described in Attachment I) for elevation steering.

b. Automotive Product: 9" maximum diameter KaBSS/KaFSS antenna (in-roof) with electronic elevation scanning over a 25-65° elevation angle, that provides switched polarization capability, and that provides minimum gain of 30.2 dBi and G/T of (TBR) dB/°K at boresight, with scanning / tracking performance that duplicates or exceeds the receive antenna performance of the ThinAir KuFSS diameter antenna described in Attachment II. At the Critical Design Review ("CDR"), the Licensor will present, and Licensor and Licensee will mutually agree upon, the design for the prototype antenna that meets these requirements as well as the proposed design for the tracking system and associated electronics. The final specifications and acceptance testing program for this antenna will also be mutually agreed upon at CDR. The automotive product will tentatively utilize a 4:1 soft switch (using the licensed technology described in Attachment I) for elevation steering.

62. Accordingly, NematicITO was to provide:

i. Licensor's aeronautical mobile satellite antenna system…capable of receiving/transmitting satellite signals in the Designated Frequent Bands….

ii. Licensor's terrestrial vehicle (automotive) mounted satellite antenna system…capable of receiving/transmitting satellite signals in the Designated Frequency Bands….

(*Id*. at 1, art. 1(a)-(b)).

63. The Designated Frequency Bands was defined:

5. **Designated Frequency Bands:** Shall mean the 12 GHz (12.2-12.7 GHz) "KuBSS" and 17 GHz (17.3-17.8 GHz) "KaBSS" Broadcasting-Satellite Service frequency bands for receive-only antenna technology, and the 11-12/14 GHz (10.95-12.2 GHz receive, 13.75-14.5 GHz transmit) "KuFSS" and 20/30 GHz (17.7-20.2 GHz receive, 27.5-30.0 GHz transmit) "KaFSS" Fixed-Satellite Service frequency bands.

(Id. at 2).

64. The Agreement was also non-assignable. (Ex. A at 7, art. vii(2)).

65. Unbeknownst to Defendant, the licensed technology did not, in fact enable the requisite Technical Requirements.

66. By way of example, the Patent License requires antenna technology capable of both transmit and receive operation. (Ex. A at 1 ("Licensed Antenna Systems"). The patents, by their embodiments, only enabled receive-only operation. None of the licensed technology, *vis-à-vis* that patents, was capable of both transmit and receive functions according to the Technical Requirements.

67. Plaintiffs asserts the technology encompassed by the Patent License enables the Technical Requirements of the Patent License.

68. Additionally, unbeknownst to Defendant, NematicITO neither owned nor had a right to transfer the technology covered by the patents and patent application. The patents and application were owned by either an entity named Wavebender, Dedi David Haziza (in his personal capacity), or Orr Partner I, LP. (Ex. E-F).

69. Plaintiffs dispute that there is an issue over patent ownership at the time the parties entered into the Patent License.

70. On September17, 2014, Plaintiffs filed suit against Defendant in the Superior Court of California, Santa Clara, alleging intentional misrepresentation, negligent misrepresentation, and breach of written contract. (Ex. D). The written contract allegedly breached is the Patent License, attached hereto as Exhibit A.

FIRST COUNTERCLAIM

Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,656,359

71. Defendant repeats and incorporates by reference each of its allegations in paragraphs 42 to 70 of its Counterclaims as though fully set forth herein.

72. Plaintiffs assert in this action that Defendant is liable to it for, *inter alias*, licensing royalties due under the Patent License.

73. Plaintiffs assert in this action that they satisfied all conditions precedent and other valuable consideration under the Patent License, including that the technology provided would enable the Technical Requirements.

74. Defendant contends it has not and does not infringe any valid claim of said patent either literally or under the doctrine of equivalents.

75. Defendant contends the technology licensed to it do not meet or enable the Technical Requirements.

76. Defendant continues to operate in the satellite and antenna industry, including present discussions with partners regarding implementing technology covered by or related to the Technical Requirements.

77. Absent a declaration of non-infringement of the said patent, including a determination of patent claim scope and limitations, Plaintiffs will continue to assert said patent and Patent License against Defendant and will, in this way, cause damage to Defendant.

78. Accordingly, an actual case or controversy exists concerning Defendant's non-infringement, and Defendant seeks a judicial determination that it has not infringed and that it is not liable for infringement of any valid claim of said patent, under any theory or basis.

SECOND COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 7,656,359

79. Defendant repeats and incorporates by reference each of its allegations in paragraphs 42 to 78 of its Counterclaims as though fully set forth herein.

80. Plaintiffs assert in this action that Defendant is liable to it for, *inter alias*, licensing royalties due under the Patent License.

81. Plaintiffs asserts in this action that Defendant is liable to it because it provided valuable consideration as part of the Patent License, including an exclusive license to the '359 patent, and moreover, that the '359 patent is not invalid.

82. The claims of the '359 patent are invalid pursuant to one or more of the provisions of Title 35 of the United States Code, including, but not limited to 35 U.S.C. §§102, 103, and/or 112. The claims of the '359 patent are anticipated by §102, or rendered obvious by §103. The claims of said patent are invalid because they were described in patents and printed publications, in public use, the subject of public demonstrations, offered for sale and/or on sale in the United States more than one year before the effective filing dates of the patents-in-suit (§102(b)). The

claims of the said patent are invalid because the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. (§103). The claims of said patent are also invalid, for indefiniteness and lack of written description under 35 U.S.C. §112 and/or the doctrine of obviousness-type double patenting.

83. One or more of the following patents, printed publications, or activities anticipate claims of the '359 patent under §102, and one or more of the following references, in combination with the skill of one of ordinary skill in the art at the time of the alleged invention, render claims of that patent-in-suit obvious under §103:

- U.S. Patent No. 2,994,873 (Goubou)
- U.S. Patent No. 6831613 (Gothard et al.)
- U.S. Patent No. 3109174 (Plummer)
- U.S. Patent No. 4,090,203 (Duncan)
- U.S. Patent No. 7030824 (Taft)

84. The examples identified above are not exhaustive and Defendant's investigation is ongoing. Defendants will serve contentions regarding invalidity throughout the case and after it receives from Plaintiffs their contentions regarding how Defendant's activities, products, and services (actual and anticipated) infringe the claims of the patents in suit.

85. Absent a declaration of invalidity, Plaintiffs will continue to assert said patent and Patent License against Defendant and will, in this way, cause damage to Defendant.

86. Accordingly, an actual case or controversy exists concerning the validity of said patent, and Defendant seeks a judicial determination that the claims of the '359 patent are invalid.

THIRD COUNTERCLAIM

Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,884,779

87. Defendant repeats and incorporates by reference each of its allegations in paragraphs 42 to 86 of its Counterclaims as though fully set forth herein.

88. Plaintiffs assert in this action that Defendant is liable to it for, *inter alias*, licensing royalties due under the Patent License.

89. Plaintiffs assert in this action that they satisfied all conditions precedent and provided valuable consideration under the Patent License, including that the '779 patent enables the technology required under the Technical Requirements.

90. Defendant has, does, and will not infringe any valid claim of said patent either literally or under the doctrine of equivalents.

91. Defendant continues to operate in the satellite and antenna industry, including present discussions with partners regarding implementing technology covered by or related to the Technical Requirements.

92. Absent a declaration of non-infringement of the said patent, Plaintiffs will continue to assert said patent and Patent License against Defendant and will, in this way, cause damage to Defendant.

93. Accordingly, an actual case or controversy exists concerning Defendant's non-infringement, and Defendant seeks a judicial determination that it has not infringed and is not liable for infringement of any valid claim of said patent, under any theory or basis.

FOURTH COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 7,884,779

94. Defendant repeats and incorporates by reference each of its allegations in paragraphs 42 to 93 of its Counterclaims as though fully set forth herein.

95. Plaintiffs assert in this action that Defendant is liable to it for, *inter alias*, licensing royalties due under the Patent License.

96. Plaintiffs asserts in this action that Defendant is liable to it because it provided valuable consideration as part of the patent license, including an exclusive license to the '359 patent, and moreover, that the '779 patent is not invalid.

97. The claims of the 779 patent are invalid pursuant to one or more of the provisions of Title 35 of the United States Code, including, but not limited to 35 U.S.C. §§102, 103, and/or 112. The claims of the '779 patent are anticipated by §102, or rendered obvious by §103. The

claims of said patent are invalid because they were described in patents and printed publications, in public use, the subject of public demonstrations, offered for sale and/or on sale in the United States more than one year before the effective filing dates of the patents-in-suit (§102(b)). The claims of the said patent are invalid because the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. (§103). The claims of said patent are also invalid, for indefiniteness and lack of written description under 35 U.S.C. §112 and/or the doctrine of obviousness-type double patenting.

98. One or more of the following patents, printed publications, or activities anticipate claims of the '779 patent under §102, and one or more of the following references, in combination with the skill of one of ordinary skill in the art at the time of the alleged invention, render claims of that patent-in-suit obvious under §103:

99. U.S. Patent No. 7,042,397 (Charrier)

100. The example identified above is not exhaustive and Defendant's investigation is ongoing. Defendants will serve contentions regarding invalidity of the patents-in-suit throughout the case and after it receives from Plaintiffs their contentions regarding how Defendant's activities, products, and services (actual and anticipated) infringe the claims of the patents in suit.

101. Absent a declaration of invalidity, Plaintiffs will continue to assert said patent and Patent License against Defendant and will, in this way, cause damage to Defendant.

102. Accordingly, an actual case or controversy exists concerning the validity of said patent, and Defendant seeks a judicial determination that the claims of the '779 patent are invalid.

FIFTH COUNTERCLAIM

Declaratory Judgment of Patent License Obligations

103. Defendant repeats and incorporates by reference each of its allegations in paragraphs 42 to 102 of its Counterclaims as though fully set forth herein.

104. Plaintiffs claim they are owed payments and compensation for research and development activities under the Patent License.

105. Defendant contends the Patent License was strictly for industry ready technology.

106. Accordingly, an actual case or controversy exists concerning Plaintiff's right to recover for said research and development activities, and Defendant seeks a judicial determination that it had no such contractual obligation.

SIXTH COUNTERCLAIM

Declaratory Judgment of Failure of Consideration

107. Defendant repeats and incorporates by reference each of its allegations in paragraphs ___ to ___ of its Counterclaims as though fully set forth herein.

108. The Patent License provides certain technical requirements to be delivered.

109. Plaintiff asserts that it met all obligations under the Patent License, including the licensing of U.S. Patent Nos. 7,656,359 and 7,884,779, which patented technology meets the technical requirements.

110. Defendant contends the patented technology fails to meet and fails to enable said technical requirements.

111. Accordingly, an actual case or controversy exists regarding whether Plaintiff's licensed antenna systems, including its patented technology, meets said technical requirements, for which Defendant seeks a judicial determination.

SIXTH COUNTERCLAIM

Declaratory Judgment of Lack of Patent Ownership

112. Defendant repeats and incorporates by reference each of its allegations in paragraphs 42 to 111 of its Counterclaims as though fully set forth herein.

113. Plaintiff NematicITO asserts that it is the assignee and owner of patents-in-suit.

114. Plaintiffs assert that NematicITO had the right to license the patents-in-suit.

115. Defendant contends NematicITO never owned such rights, including the right to license.

116. Accordingly, an actual case or controversy exists regarding ownership of the patents-in-suit and NematicITO's ability to license them, for which Defendant seeks a judicial determination.

PRAYER FOR RELIEF

WHEREFORE, with respect to Plaintiffs' Complaint and Defendant's Defenses and Counterclaims, Defendant prays for relief as follows, that this Court:

A. Dismiss with prejudice Plaintiffs' claims and deny them all the relief they seek, or any relief at all;

B. Enter judgment in favor of Defendant;

C. Find and declare the claim of U.S. Patent Nos. 7,656,359 and 7,884,779 not infringed;

D. Find and declare the claims of said patents invalid;

E. Find and declare said patents unenforceable;

F. Find and declare that Defendant has not breached any term of the Patent License;

G. Find and declare that the Patent License is unenforceable;

H. Find and declare that one or both Plaintiffs lacked standing to bring this suit;

I. Find and declare this case exceptional under 35 U.S.C. § 285;

J. Award costs and attorneys' fees to Defendant; and

K. Award Defendant such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Defendant hereby demands a jury trial on all issues from the Answer and Counterclaims triable of right by a jury.

Dated: March 15, 2016

Respectfully submitted,

AXCEL LAW PARTNERS

David T. Wei

Attorneys for
DEFENDANT SPECTRUM FIVE LLC